IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.11.2004

Coram:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

Writ Petition Nos.18894 and 18900 of 1996

Writ Petition No.18894 of 1996

D.J.Davidraj Panchamoni ..Petitioner

Vs.

1. Presiding Officer,
   Labour Court,
   Tirunelveli.
2. Management,
   Tuticorin Port Trust,
   Tuticorin - 628 004 ..Respondents

Writ Petition No.18900 of 1996

D.J. Davidraj Panchamoni ..Petitioner

vs.

1. Union of India rep.by
   Secretary,
   Ministry of Shipping & Transport,
   Transport Wing,
   New Delhi -1.
2. Tuticorin Port Trust,
   rep. by Chairman
   Tuticorin - 4. ..Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari and Writ of Mandamus respectively as stated therein.

For petitioner : Mr. K.S.Narayanan

For 2nd respondent : Mr. Dhamodaran

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O R D E R

Writ Petition No.18894 of 1996 has been filed by the petitioner praying for the issuance of a Writ of Certiorari to call for the records relating to C.P. No.213/1992 on the file of the first respondent and to quash the same whereas Writ Petition No.18900 of 1996 has been filed by the same petitioner praying for the issuance of a Writ of Mandamus to direct the respondents to reconsider the petitioner's claim for refixation in the scale of pay at Rs.260-430 from that of the scale fixed at Rs.225-308 for the period between 1.1.1973 to 2.3.1980 with consequential benefits therefor.

2. Today when the Writ Petitions were taken up for consideration in the presence of the learned counsel for the petitioner and the second respondent, what comes to be known is that the petitioner joined in the second respondent Port Trust on 1.8.1963 as Class IV employee; that he had passed SSLC; that on 22.2.1965, he was promoted as Ferro Printer; that his basic pay was fixed at Rs.110-3-131; that in 1962 the Second Pay Commission has fixed two pay scales viz., Rs.110-3-131-4-175-5-180 and 110-4-170-5-200; that the said pay scale was not given to the petitioner; that subsequently, on the recommendation of the Ministry of Shipping and Transport, SSLC has been prescribed as the qualification for the post of Ferro Printer vide letter dated 31.12.1968; that even then the petitioner was not paid the second Pay Commission pay scale; that on 1.4.1974 the Third Pay Commission fixed five types of time scale of pay, which came to force from 1.1.1973; that the time scale of pay Rs.260 – 430 fixed by the Third Pay Commission for the SSLC qualification has not been paid to the petitioner; that the petitioner's association has requested the management to fix the said time scale of pay for Ferro Printer; that the management conducted Joint Council Meeting on 10.4.1974, 17.12.1975, and 25.8.1976 pursuant to the request of the association; that the petitioner has forwarded a representation dated 17.12.1977 seeking time scale of pay according to the Third Pay Commission's recommendation, for which the respondent has replied that the Ministry has not accepted vide letter dated 17.4.1978; that the petitioner's association raised an Industrial Dispute before the Assistant Labour Commissioner (C), Ernakulam; that as no settlement could be reached, failure report was submitted to the Ministry of Labour in December 1978

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by the Assistant Commissioner; that the Ministry of Labour invited comments from the Ministry of Shipping and Transport; that the Ministry of Labour vide Letter No.L44012(1) 78 DIV (A) dated 28.7.1979 decided not to refer the dispute for adjudication. In other words, the Government of India had declined to refer the matter to concerned Industrial Tribunal and by the letter dated 26.1.1984 of the Assistant Labour Commissioner Grade-I, it was stated that he may approach the Labour Court for his remedy. However, the Labour Court dismissed the Claim Petition. Aggrieved over the order of the dismissal of the Claim Petition, the petitioner has come forward to file the present Writ Petition.

3. Learned counsel appearing for the petitioner would submit that the petitioner has filed the above two Writ Petitions viz., one is against the award of the Labour Court and the other is against the order of refusal of the management for fixing the time scale of pay in accordance with the Pay Commission as extracted above.

4. Learned counsel appearing for the petitioner, however, submits that the other employees who are junior to the petitioner are getting higher salary than that of the petitioner; that the petitioner was fully qualified for the post of Ferro Printer; that though he was promoted to the post of Ferro Printer with SSLC qualification, he was not given the appropriate time scale of pay; that in 1968, the Board of Directors framed rules prescribing SSLC as the qualification for the post of Ferro Printer; since the Government made recommendations in the year 1981 for the time scale of pay sought for, the management shifted the petitioner as outdoor clerk; in *the Government of Tamil Nadu represented by its Secretary (Courts V) Department and the Registrar, High Court, Madras vs. 1. S. Palayam, 2.K. Vasudevan (1994 Writ L.R.634)*, it was held that there should not be any disparity in the Pay scale of persons working in equivalent grades; that the Labour Court has no jurisdiction under Section 33(c)(ii) of the Industrial Disputes Act to go into claim of the petitioner; and hence would pray for allowing the Writ Petitions.

5. On the contrary, the learned counsel appearing for the second respondent would state that the Conciliation Officer referred the matter to the Central Government sending failure report but the Central Government declined to refer the matter to the Industrial Tribunal; that when the petitioner has not

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challenged the declining order, it became final; that the petition has been filed after a lapse of 16 years; that though it is said that the delay was caused in filing the petition due to the approach of wrong forum, the delay was not properly explained.

6. Learned counsel for the second respondent relies on the judgment of *Chairman-cum-Managing Director,Neyveli Lignite Corporation Ltd., Neyveli(1998 (3) LLN 339)* wherein it is held that when employee files a Writ Petition challenging the order of Labour Courts after a delay of about nine years after his relief from duty when there is no explanation for delay, the employee is guilty of unexplained delay and laches and the ground of approaching wrong forum has no justification to undue delay and unexplained delay or laches defeats the purpose. In *Pondicherry Khadi and Village Industries Board vs. P.Kulothangan and another (2004) 1 MLJ 116 (SC)*, it is well settled that although the entire Civil Procedure Code is not applicable to industrial adjudication, the principles of resjudicata laid down under Sec.11 of the Code are applicable including the principles of constructive *res judicata*. On such arguments, the learned counsel for the second respondent would pray to dismiss both the above writ petitions.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel appearing for both sides, it could be assessed by this Court that the petitioner after inordinate delay of 16 years and without challenging the order of the Central Government, wherein it has declined to refer the matter to the Industrial Tribunal, after the failure report of the Conciliation Officer, has come forward to file both the above writ petitions. One is challenging the award of the of the Labour Court passed in C.P.No.213/92, wherein the Labour Court would conclude that the scale of pay of the petitioner was properly fixed in accordance with the third pay commission and therefore, there was no necessity to revise the same as per the request of the petitioner. The second writ petition has been filed against the order of refusal of the management for fixing the time scale of pay in accordance with the pay commission. It could be seen that so far as the first writ petition is concerned, the Labour Court has arrived at its own decision on a clear discussion held on facts, though it has not gone into the latches and the petitioner's failure to challenge the refusal of the Central Government to refer the matter to the

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Industrial Tribunal, which are vital for consideration and therefore, it is only proper if both these legal questions have to be settled prior to going into the merits of the case and in such event, it could be seen glaringly and it is also admitted by the petitioner that on a failure report of the Conciliation Officer and referring the matter to the Central Government, the State Government declined to refer the matter to the Industrial Tribunal. It should have been challenged by the petitioner. Since it has become final, the petitioner cannot again take up the same as it is barred by res judicata. Secondly, after the period of 16 years, the petitioner has come forward to file the above writ petitions, which is not an ordinary delay, but inordinate and unacceptable for which, on the part of the petitioner, no satisfactory explanation has even been offered, and therefore, the above writ petitions have to fail on principle of latches and these two grounds being vital and legal ones, question of going into the merits of the writ petitions would not arise and if would be only a wasteful exercise. Hence, the following order:-

Both the above writ petitions do not merit acceptance and they become liable only to be dismissed and they are dismissed accordingly. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

asvm/bg

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To
1. Presiding Officer, Labour Court, Tirunelveli.

2. Management, Tuticorin Port Trust, Tuticorin - 628 004

3. The Secretary to Government,
   Ministry of Shipping & Transport,
   Transport Wing,
   New Delhi -1.

+1cc to Mr. G.Dhamodaran,Advocate SR.No.51115

+1cc to Mr. K.S.Narayanan,Advocate SR.No.50384

TEJ
kaa 22.02.05

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